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7 Attorneys for Plaintiff

The Hanover Insurance Company

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

11 THE HANOVER INSURANCE COMPANY,
a New Hampshire corporation,

12 Plaintiff,

13 vs.

14 HERITAGECREST, LLC, a Nevada limited
15 liability company; DFD HOLDINGS, LLC, a
Nevada limited liability company; PIR FOAM
16 SUPPLY, LLC, a Nevada limited liability
company; BROOKSPARK 291, LLC, a
17 Nevada limited liability company; WRG
CLAIM, LLC, a Nevada limited liability
18 company; WORLD MARKET CLAIM, LLC,
a Nevada limited liability company;
19 CYNTHIA DALEY, Individually and as
Trustee of the CWD NEVADA TRUST;
20 CWD NEVADA TRUST, DEE DALEY
Individually and as Trustee of the DFD
21 NEVADA TRUST; DFD NEVADA TRUST,

22 Defendants.

CASE NO.: 2:12-cv-00724-APG-NJK

**AMENDED DEFAULT JUDGMENT
AGAINST DEFENDANTS**

23
24 The Court, having considered Plaintiff The Hanover Insurance Company's ("Hanover")
25 Complaint against Defendants Heritagecrest, LLC, DFD Holdings, LLC, PIR Foam Supply, LLC,
26 Brookspark 291, LLC, WRG Claim, LLC, World Market Claim, LLC, Cynthia Daley, as trustee
27 for the CWD Nevada Trust, CWD Nevada Trust, Dee Daley, individually and as trustee for the
28 DFD Nevada Trust, and the DFD Nevada Trust (collectively, "Defendants"), the default entered

1 against Defendants, and each of them, for failing to appear or otherwise respond to the Complaint
2 despite proper service of same and the summons, and Plaintiff's Application for Entry of Default
3 Judgment against Defendants and Plaintiff's Supplement thereto, including the accompanying
4 Affidavit and Declaration of Michelle Smith Cotto, Esq. (collectively, "Smith Cotto Affidavit")
5 and all exhibits thereto, the supporting Memorandum of Points and Authorities, the argument and
6 facts presented at the hearing held on Plaintiff's Application for Default Judgment before this
7 Court on September 4, 2013, and the Court being fully advised of the premises, finds as follows:

9 1. Defendants, and each of them, executed and agreed to be bound by the terms of the
10 Indemnity Agreement attached to the Smith Cotto Affidavit as Exhibit 1 ("Indemnity
11 Agreement").

12 2. In partial reliance upon the Defendants' execution of the Indemnity Agreement,
13 Plaintiff issued the bonds identified in Exhibits 2 and 3 (the "Bonds") to the Smith Cotto
14 Affidavit on behalf of Mechanical Insulation Specialists in the collective amount of
15 \$4,697,049.12 (performance bonds + payment bonds) in connection with which Plaintiff has
16 received and continues to receive claims.

18 3. Pursuant to the terms of the Indemnity Agreement, Defendants are jointly and
19 severally liable to indemnify and hold harmless Plaintiff for losses it incurs for claims on the
20 Bonds.

22 4. Further, pursuant to the Indemnity Agreement, Defendants are jointly and
23 severally liable to post collateral in the type and amount demanded by Plaintiff that Plaintiff, in its
24 sole discretion, deems adequate to protect Plaintiff against anticipated future losses for Bond
25 claims.

26 5. Mechanical Insulation Specialists declaration of bankruptcy and abandonment of
27 its projects has required Plaintiff to pay a substantial number of claims. In connection with these
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1 claims, Plaintiff has been and will continue to be sued by Mechanical Insulation Specialists'
2 subcontractors and suppliers seeking payment.

3 6. Pursuant to the terms of the Indemnity Agreement, Defendants expressly agreed
4 that Plaintiff's proof of losses related to Bond claims, such as the proof of payments attached to
5 the Smith Cotto Affidavit, would be conclusive evidence of the fact and amount of Defendants'
6 liability for those payments.
7

8 7. Plaintiff has proven to this Court's satisfaction that as of June 20, 2013 it has
9 incurred the total amount of \$924,574.11 to investigate and resolve claims on the Bonds, which
10 includes consultant and legal expenses for investigating the status of the bonded projects and
11 investigating and resolving the claims and related litigation.
12

13 8. Plaintiff has proven to this Court's satisfaction that it faces continued exposure for
14 losses on the Bonds, including claims, costs, expenses and attorneys' fees, in the amount of
15 \$2,000,000.00 for payments to satisfy bonded obligations for which the Defendants are obligated
16 to indemnify Plaintiff and post collateral pursuant to the Indemnity Agreement they signed.
17 Defendants are expressly, and presently, liable to Plaintiff to post \$2,000,000.00 of cash collateral
18 with Plaintiff based upon Defendants' obligation to post collateral with Plaintiff contained in the
19 Indemnity Agreement.
20

21 **Accordingly, IT IS HEREBY ORDERED THAT:**

22 1. Plaintiff is awarded the following damages against Defendants, jointly and
23 severally:

- 24 a. \$924,574.11 for the amount Plaintiff has already incurred to resolve
25 bonded obligations as of June 20, 2013; and
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1 b. \$2,000,000.00 cash collateral to be posted by Defendants with
2 Plaintiff as security for Plaintiff's exposure for anticipated future
3 Bond losses;

4 c. Accordingly, Plaintiff is awarded the Judgment against Defendants,
5 jointly and severally, in the total amount of \$2,924,574.11
6 (\$924,574.11 [payments made and already incurred by Plaintiff] +
7 \$2,000,000 [anticipated future payments by Plaintiff for Bond
8 claims]).
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2. The total Judgment of \$2,924,574.11 against Defendants jointly and severally and in favor of Plaintiff shall accrue post-judgment interest pursuant to 28 U.S.C. § 1961.

DATED: September 20, 2013 at 3:12 p.m.



UNITED STATES DISTRICT JUDGE

Judgment Prepared By:

WATT, TIEDER, HOFFAR
& FITZGERALD, L.L.P.

By

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